IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.963 OF 2005

Shri Dharma Narayan Dingore .. ..Appellant
Versus
Shri Shivaji Deu Kharik .. ..Respondent

Mr.A.R.Pitale for appellant

CORAM : P.V.KAKADE, J.

DATE : 12TH SEPTEMBER,2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Kalyan, Thane dated 27.9.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Shahapur dated 12.8.1999 dismissing the Plaintiff's suit for removal of encroachment on suit property and possession of the encroached portion as well as for perpetual injunction against the defendant.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff came with the case that the

defendant had encroached upon his property of Plot No.17 out of Survey No.51/3 admeasuring 0.59.61 area situated at village Wafe contending that he is owner and possession of the said plot and it is his ancestral property as per M.E.No.396 and after death of his father it came to be mutated in his name. Some portion of original S.No.51/3 was converted into non-agricultural use and lay out of 16 plots was sanctioned and remaining portion was given plot no.17 out of land at S.No.51/3. It is alleged that northern side of the suit plot there is Shahapur-Wafe road and defendant is the son of Smt. Devakabai Deu Dingore, who is owner of land bearing Survey No.41/1/P admeasuring 7 gunthas. It is further submitted that Shahapur-Wafe road has divided boundaries of village Wafe, whereas the property of defendant bearing S.No.41/1/P located in village Gotheghar to the northern side of Shahapur-Wafe road and though the defendant has no concerned with the said plot, on 11.12.1996 he entered into the suit plot and started digging foundation admeasuring 40 x 10 ft on that plot and also brought building material and obstructed the possession of the plaintiff. Hence the suit came to be filed. The defendant contested the suit, inter alia, denying the allegations and submitting that the Survey

No.41/1/P belongs to the defendant and no encroachment is made by him on the land of the plaintiff and as such sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff has proved that he is exclusive owner of the suit property, however, has failed to prove that the defendant has encroached over his property or has obstructed his possession and the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be agitated is that both the courts below have not considered the evidence regarding the encroachment over the suit property. In fact it is seen from the record that there are in all three maps produced on record, however, both

the courts come to the conclusion that those maps including map drawn by Court Commissioner were unable to find encroachment over the suit property and the evidence of the concerned witnesses relating to the maps on record was not satisfactory and was quite vague and therefore, plaintiff failed it to prove that the defendant had made encroachment to the extent of 40 x 10 ft on suit plot no.17. The evidence further shows that the defendant has constructed a chawl on his own Survey No.41/1 and as such there is no evidence whatsoever to show that the defendant had in fact obstructed possession of the plaintiff over the suit property.

. It is needless to mention that the concurrent findings of both the courts below are seen to be based on proper evidence on record. In this regard it must be noted that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C., especially when in a case where from a given set of circumstances two inferences are possible, one drawn

by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In view of this legal position I have no hesitation to hold that the appeal is devoid of any merits and as such it stands dismissed.

. Consequently Civil Application No.1482 of 2005 also stands dismissed.